

Robert L. Hyde (SBN: 227183)
 bob@westcoastlitigation.com
 Joshua B. Swigart (SBN: 225557)
 josh@westcoastlitigation.com
HYDE & SWIGART
 411 Camino Del Rio South, Suite 301
 San Diego, CA 92108-3551
 Telephone: (619) 233-7770
 Facsimile: (619) 297-1022

Attorneys for Plaintiff
 Vian Charbonneau

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

VIAN CHARBONNEAU,

 PLAINTIFF,

 V.

**THE PATRICK M. CORBETT
 LAW OFFICE,**

 DEFENDANT.

Case No.: 08-CV-01833-MHP

**AMENDED JOINT CASE
 MANAGEMENT STATEMENT**

**[Plaintiff and Defense Counsel
 Request Telephonic Appearances]**

HON. MARILYN H. PATEL

Date: August 11, 2008
Time: 4:00 p.m.

Plaintiff, VIAN CHARBONNEAU, (“Plaintiff”) and Defendants, PATRICK M. CORBETT LAW OFFICE, PATRICK CORBETT, SOUTHERN TIER AGENCY, (“Defendants”) met and conferred pursuant to Rule 26 of the Federal Rules of Civil Procedure on July 3, 2008 via telephone conference. The Conference was attended by David McGlothlin, Esq. on behalf of Plaintiff and Andrew M. Steinheimer, Esq. on behalf of Defendant.

The parties jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

//

//

//

CIVIL LOCAL RULE 16-9 INFORMATION**1. Jurisdiction and Service:**

Jurisdiction: This case was removed based on alleged jurisdiction arising under 28 U.S.C. § 1331, and pursuant to 28 U.S.C. § 1367 for pendent state law claims.

Service: All parties have been served.

2. Facts:

Plaintiff alleges: Plaintiff alleges, Defendant, a debt collector, committed multiple violations of Cal. Civ. Code § 1788 et seq. and 15 U.S.C. § 1692 et seq. including placing several false, misleading, deceptive and abusive phone calls to Plaintiff.

Defendant alleges: Defendant denies that it violated the FDCPA and claims Defendant was legally attempting to collect a debt.

3. Legal Issues:

Whether Defendant violated the California's Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788 et seq. ("RFDCPA"), and the Fair Debt Collection Act ("FDCPA"), 15 U.S.C. §1692 et seq.

4. Motions:

There are no prior or pending motions. The parties may file a motion for summary judgment once discovery has been conducted.

5. Amendment of Pleadings:

Plaintiff does not anticipate amending his pleadings at this time.

6. Evidence Preservation:

Plaintiff – Plaintiff is not in possession of any evidence which may result in some form of spoliation if steps are not taken. Plaintiff intends on taking immediate steps to secure the telephone records of Defendant and to ensure that certain consumer account files are not destroyed in the normal course of business.

Defendant – Defendant has taken steps to ensure that its telephone records and customer account transaction logs and files are not destroyed in the ordinary course of its business.

7. Disclosures:

All parties agree to complete the initial Rule 26(a)(1) disclosures of witnesses, documents, itemized damage computations and insurance by August 1, 2008.

8. Discovery:

The parties have not yet conducted any discovery. Discovery is currently contemplated on issues framed by the pleadings.

9. Class Actions:

A class certification motion is not anticipated at this time as this case was filed as an individual action.

10. Related Cases:

There are no related cases at this time.

11. Relief:

Plaintiff respectfully requests the Court grant Plaintiff the following relief against Defendant:

FAIR DEBT COLLECTION PRACTICES ACT

- an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) in an amount to be adduced at trial, from Defendant;
- an award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- an award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

- an award of actual damages pursuant to California Civil Code § 1788.30(a) in an amount to be adduced at trial, from Defendant;

- an award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b);
- an award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

12. Settlement and ADR:

The parties agreed to an Early Neutral Evaluation.

13. Consent to Magistrate Judge For All Purposes:

Plaintiff and Defendant do not consent to have a United States Magistrate Judge conduct all further proceedings including trial and entry of judgment.

14. Other References:

The case is not suitable for reference to binding arbitration, a special master, or Multidistrict Litigation at this time.

15. Narrowing of Issues:

None.

16. Expedited Schedule:

This case *cannot* be handled on an expedited basis with streamlined procedures.

17. Scheduling:

The parties propose the following dates for this case:

Designation of expert witnesses – 01/22/09.

Non-expert discovery cutoff – 03/19/09.

Expert discovery cutoff – 3/19/09.

Date by which all dispositive motions shall be filed with the Court – 04/23/09.

Pretrial conference – 06/18/09.

Trial date – 07/23/09.

18. Trial:

The trial of this matter should last three to four days.

Both parties request a jury trial.

19. Disclosure of Non-party Interested Entities or Persons:

Plaintiff will file the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16.

Defendants have filed the "Certification of Interested Entities or Persons". Plaintiff and Defendants recertify as of the date of this report there are no other interested entities or parties to disclose.

20. Other Matters:

Not applicable.

Dated: August 4, 2008

HYDE & SWIGART

By: /s/ Joshua B. Swigart
Joshua B. Swigart
Attorney for Plaintiff

Dated: August 4, 2008

By: /s/ Andrew M. Steinheimer
Andrew M. Steinheimer
Attorney for Defendant